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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,080	12/23/2003	Atsushi Tomokuni	247041US0	8103
22850 7590 01/29/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER CHANNAVAJALA, LAKSHMI SARADA	
			ART UNIT 1611	PAPER NUMBER
			NOTIFICATION DATE 01/29/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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## Office Action Summary

**Application No.**

10/743,080

**Applicant(s)**

TOMOKUNI, ATSUSHI

**Examiner**

Lakshmi S. Channavajjala

**Art Unit**

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt of amendment and response dated 12-31-07 is acknowledged.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn because the office action of 10-10-07 has been made Final in error.

Claims 1-7, 9 and 11-19 are pending in the instant application.

#### ***Response to Arguments***

1. Applicant's arguments, see pages 1-4, filed on 12-31-07, together with the arguments presented during the interviews dated 12-14-07 and 10-26-07 with respect to the rejections of record and in particular the limitation of lipophilic amphiphiles of instant claims have been fully considered and are persuasive. The rejections of 10-10-07 have been withdrawn.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-7, 9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,346,507 to Watanabe et al (Watanabe) in view of US 5,7859,79 to Wells OR over US 6,830,754 to Hasebe et al (Hasebe) in view of US 6,346,507 to Watanabe et al (Watanabe) and US 5,7859,79 to Wells.

4. Watanabe teaches a liquid crystal composition in the form of a bi-continuous type microemulsion (col. 6, L 63-67) in makeup removing (cleansing) compositions for skin and hair. Watanabe teach liquid crystal microemulsions comprising 10-60% of a nonionic surfactant, 1-50% of a water-soluble substance with a hydroxyl group, 1-70% of silicone oil, upto 10-60% water (col. 2), which meet the instant components B, D, A and E respectively of claim 1. The specific surfactants, oils, solvents with OH groups are all described in col. 3, L 10 through col. 4, L 5 of Watanabe.
5. The specific nonionic surfactants of Watanabe in col. 3, L 11-28, include those recited in instant claims 5 and 6 (ex: polyethylene glycol fatty acid ester).
6. The water soluble solvents of Watanabe (col. 3, L 29-54) read on those of instant claim 9.
7. For the claimed oils, Watanabe teaches hydrocarbon oils such as isoparaffin of claims 3 and 4 and hence the viscosity of claim 2 is implicit. Watanabe also teaches other oils (col. 4, L 35-50).
8. The amounts or percentages of components A, B, D and E in claims 1, 11, 13, 15 and 16 overlap with those taught by Watanabe.
9. While Watanabe does not teach the exact HLB of the hydrophilic surfactants of claim 1, 5 and 12, Watanabe teaches the surfactants for forming a surfactant phase, as also required in the instant application. Besides the surfactants described as nonionic by Watanabe includes the same surfactants described and claimed. Accordingly, burden is shifted to applicants to show that the surfactants do not meet the claimed HLB values because.

10. Instant claim 17 does not recite any specific substrate, whereas Watanabe recognizes cleansing or makeup removing compositions impregnated on tissue paper (background section of Watanabe). Hasebe a washing composition comprising an amphipathic dispersion of 5%-40% an amphipathic lipid such as a ceramide or pseudo ceramide (col. 2, L 25-63), 2%-55% of a nonionic surfactant such as alkyl polyglucoside, also claimed in instant claims 5 and 6 (see col. 3, L 11-67). The cleansing composition of Hasebe further contains solvents such as glycerin, dipropylene glycol and butanediol, all of which read on the instant water soluble solvent (examples) and Hasebe further suggests ethanol in col. 6, L 5-7) as a solubilizing assistant. Hasebe, in addition, suggests including oils such as hydrocarbon oils or silicone oils in the composition (col. 5, L 62-67), but fails to exemplify.

11. Both Watanabe and Hasebe fail to teach instant component C i.e., a lipophilic amphiphile. However, Hasebe teaches that the amphipathic ceramides impart good-emulsion and stability properties to the composition.

12. Wells teach a personal cleansing composition comprising a 4% to 50% of aqueous surfactant system, an anionic or nonionic polymer, a phase separation initiator and water. The aqueous surfactant system of Wells is made of anionic or nonionic surfactants, the latter including the claimed hydrophilic surfactants such as those claimed (col. 9-10). The phase separation initiators of Wells include the amphiphile compounds of the instant claims (col. 13, L 33-col. 14, L 63), particularly the fatty alcohols, which are also claimed in the instant application.

13. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to add the amphiphile phase initiators of Wells, such as the fatty alcohols, in the cleansing compositions of Watanabe or of Hasebe because Wells teach that the cleansing and conditioning phases of the cleansing compositions are maintained separately by the phase initiators and also provide good lathering and conditioning benefits without the incompatibility problems between the anionic (cleansing) and cationic (conditioning) phases. With respect to claimed ratio of the component D to the sum of components B and C being 1 or greater, all of the references are drawn to preparing emulsions in cleansing compositions and Wells suggests that the amphiphile surfactants are important for separating the oil and aqueous phase for the performance of the composition and preparing the emulsions and therefore optimizing the individual amounts of an emulsion without compromising the separation of phases would have been within the scope of a skilled artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/743,080  
Art Unit: 1611

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AU 1611  
January 11, 2008

  
LAKSHMI S. CHANNAVAJJALA  
PRIMARY EXAMINER